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No. 95-1522

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1995

MANOLO DE LOS SANTOS,

Petitioner,

vs.

CAMBRIDGE TANKERS, INC.,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of the State of California

RESPONDENT'S BRIEF IN OPPOSITION

GREGORY W. POULOS
Counsel of Record
LILLICK & CHARLES LLP
Attorneys for Respondent
Two Embarcadero Center
San Francisco, California 94111-3996
(415) 984-8200

8718
Lutz Appellate Services, Inc.
(800) 3 APPEAL • (800) 5 APPEAL • (800) BRIEF 21

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COUNTER STATEMENT OF QUESTION PRESENTED

Can the plaintiff in a personal injury action brought pursuant to the Jones Act, 46 U.S.C. § 688, compel the court to instruct the jury on a definition of unseaworthiness using particular language chosen by plaintiff's counsel?

STATEMENT OF INTERESTED PARTIES

Respondent, Cambridge Tankers, Inc. is related to Overseas Ship Holding Group, Inc.

STATEMENT OF THE CASE

Pursuant to Rule 15.1 of the Supreme Court Rules, Respondent submits the following Statement of the Case to correct omissions and misstatements in the Petition for Certiorari.

Petitioner was injured while working aboard the M/V OVERSEAS BOSTON. At the time of the accident Petitioner was preparing to move several 4'x8' wall panels. The panels fell on Petitioner when he loosened a clamp which held them against a bulkhead while standing directly in front of the panels. Petitioner contended, *inter alia*, that Respondent should have assigned more men to the job of moving the panels. Respondent introduced evidence that the accident was the result of Petitioner's own negligence and that Petitioner's supervisor was available to provide assistance if needed. Petitioner never requested any assistance.

Petitioner's theory that the vessel was unseaworthy because too few crew members were assigned to the task of moving the panels was presented to the jury both in closing arguments and in the instructions. In his closing arguments Petitioner's counsel told the jury that "If it takes two men to hold these panels up when they get unbalanced and there's only one there the ship is liable for lack of manpower."

Petitioner's counsel also argued that the court should give the pattern instruction on unseaworthiness suggested by 3 *Devitt, Blackmar and Wolff* § 95.11. Respondent requested that the trial court give the unseaworthiness instruction approved by the Ninth Circuit. *Manual of Model Civil Jury Instructions for the Ninth Circuit*, 1993 Edition § 9.02.02. The two instructions are best compared side by side. They read as follows:

Devitt, Blackmar & Wolff	Ninth Circuit Pattern Instruction
An unseaworthy condition may result from the lack of an adequate crew, the lack of adequate manpower to perform a particular task on the ship, or an improper use of otherwise seaworthy equipment.	A vessel is unseaworthy if the vessel, or any of its parts or equipment, is not reasonably fit for its intended purpose or if its crew is not reasonably adequate or competent to perform the work assigned.

The trial court believed that the two instructions were very similar, but that the Ninth Circuit instruction was clearer. The Court of Appeals likewise held that the two proposed instructions bear "a high degree of similarity." Petitioner's counsel never requested that the trial court use the instruction approved by the Fifth Circuit.

REASONS FOR DENYING THE WRIT

I.

INTRODUCTION

The petition for certiorari is frivolous because it is based solely on Petitioner's preference for the wording of one jury instruction over another similar instruction. The instruction given by the trial court, which was taken from the Ninth Circuit's *Manual of Civil Jury Instructions*, clearly conveyed the concept that insufficient manpower for a particular task may constitute unseaworthiness in the context of a seaman's personal injury action. This concept, which was embraced by this Court in *Waldron v. Moore-McCormick Lines*, 386 U.S. 724 (1967), has become a commonplace in maritime law. There is no conflict among the circuits. Petitioner feels that the instruction he

proposed was a better expression of the concept than the Ninth Circuit pattern instruction. Both the trial court and the Court of Appeals found that the Ninth Circuit's instruction was better. In any event, Petitioner was not entitled to an instruction in particular words of his own choosing but only to a legally correct instruction, which was unquestionably what he got. Petitioner raises no important issue of federal law but is merely asking this Court to intervene in the fine tuning of a jury instruction concerning a well-settled point of law.

II.

THERE IS NO CONFLICT BETWEEN THE DECISION OF THE CALIFORNIA COURT OF APPEALS AND ANY FEDERAL COURT.

Petitioner argues that the Ninth Circuit pattern jury instruction conflicts with the Supreme Court's holding in *Waldron v. Moore-McCormack Lines,* 386 U.S. 724 (1967) and the Fifth Circuit's pattern jury instruction on unseaworthiness. It does not.

Waldron v. Moore-McCormack Lines, 386 U.S. 724, 727 (1967) holds that a vessel may be unseaworthy if "too few men" are assigned "when and where" the job is to be done. *Waldron* did not hold that this theory must be contained in any particular wording. Both the *Devitt, Blackmar & Wolff* and the Ninth Circuit instructions convey the theory of unseaworthiness identified in *Waldron*. The California Court of Appeals held, citing *Waldron,* that the Ninth Circuit pattern instruction "correctly informed the jury that a vessel with a crew not reasonably adequate for the assigned work was unseaworthy." (Appendix at 11).

Petitioner's discussion of the Fifth Circuit pattern

instruction is irrelevant because Petitioner did not request that it be given and because the instruction given is consistent with *Waldron*.

III.

THE PETITION DOES NOT RAISE AN IMPORTANT AND UNRESOLVED ISSUE OF LAW.

The Supreme Court's holding in *Waldron v. Moore-McCormack Lines*, 386 U.S. 724 (1967) resolved the question of whether a vessel can be unseaworthy if too few crew members are assigned to a particular task. The Ninth Circuit pattern jury instruction accurately conveys this theory of liability to the jury. Petitioner's real complaint is not with whether the jury was properly instructed, but rather that they be instructed in particular words of his own choosing. The precise wording of jury instructions is not an important question for the Supreme Court to decide. It has long been settled that under federal law a party is not entitled to have the jury instructed in any particular language so long as the instructions given are a correct statement of the law. *United States v. Goldblatt*, 813 F.2d 619, 623 (3d Cir. 1987); *United States v. Hayes*, 794 F.2d 1348, 1350-1351 (9th Cir. 1986); *Ferren v. Richards Mfg. Co.*, 733 F.2d 526, 530 (8th Cir. 1984).

CONCLUSION

The Petition should be denied because the instruction given was correct and adequately conveyed the concept of unseaworthiness set forth by this Court in *Waldron*. Petitioner's preference for different wording is not worthy of this Court's attention.

Respectfully submitted,

GREGORY W. POULOS
Counsel of Record
LILLICK & CHARLES LLP
Attorneys for Respondent
Two Embarcadero Center
San Francisco, CA 94111-3996
(415) 984-8200